

DATE: November 4, 2011

TO: Barbara Ross, Deputy Director
Department of Planning and Zoning

FROM: Nathan Randall, Planner
Department of Planning and Zoning

SUBJECT: Special Use Permit #2011-0065
Administrative Review for Change of Ownership
Site Use: Restaurant
Applicant: Jin M. Oh d/b/a Sushi Naru
Location: 540 John Carlyle Street
Zone: CDD#1 / Coordinated Development District #1

Request

Special Use Permit #2011-0065 is a request to change ownership of an existing restaurant from Joyce Abdullah to Jin M. Oh. The applicant will operate a sushi restaurant, to be called Sushi Naru, which will have no live entertainment and will offer fewer indoor and outdoor seats and an earlier closing hour compared to the prior restaurant at this site.

Background

Prior Approvals

The Carlyle Master Plan was first approved by SUP in 1990, and has been amended several times since then, most recently in March 2010 (SUP#2009-0081). Staff administratively approved DSP#2001-0033 for the construction of the subject building, known as Carlyle Block L, in 2001. The prior restaurant at the site, known as Zikrayet, was first approved administratively by staff in 2007 pursuant to Condition #102A of the Carlyle SUP, which allows full service restaurants to be approved administratively subject to specific standards. Prior to actually opening the restaurant, the applicant applied for an SUP amendment to allow live entertainment and extend the hours of operation, which was approved by City Council in January 2008 (SUP#2007-0114).

Enforcement Matters

City staff has received several complaints from residents living near Zikrayet restaurant in the last three years. The significant enforcement initiative that resulted from these complaints, which is detailed in memorandums to City Council from earlier this year and attached to this case file, involved multiple City departments and dozens of site visits spanning from early summer 2008 through this year. The most common complaint has been loud music and other noises from the restaurant being heard in residential condominium units late at night. Additional complaints have included: loud and unruly patrons (particularly at close of business), possible live entertainment in outdoor dining area, the operation of a nightclub and assessment of a cover charge, cigarettes and litter from the restaurant going uncollected along John Carlyle Street, and cigarette smoking on

sidewalk below residential windows. Despite its enforcement efforts, Planning & Zoning staff has not found any violations of SUP conditions at the existing Zikrayet restaurant. On a few occasions in 2011, however, the Police Department has issued citations to the Zikrayet for violations of City's noise ordinance.

Recent Developments

Based on the significant history of complaints at Zikrayet, the Director determined in mid-September that this administrative change of ownership request should be brought forward to Planning Commission and City Council as a full hearing case pursuant to Section 11-511(C)(2) of the Zoning Ordinance. In mid-October, staff agreed to the property owner's request to revert the case back to an administrative approval based on input from affected residents and the Carlyle Square Condominium Association that staff had addressed their concerns through amendments to the existing SUP condition language to restrict the closing hour and to eliminate live entertainment.

Community Outreach

Public notice was provided through eNews, via the City's website, and by posting a placard on the site. In addition, the Carlyle Square Condominium Association and the Carlyle-Eisenhower Civic Association were sent e-mail messages with information about the current application. Staff also contacted individual unit owners in the Carlyle Square Condominium who had reported concerns about the prior restaurant.

Staff Action

Staff supports the change of ownership request, noting that the proposed restaurant is a good fit for a tenant space located immediately below residential uses. The proposal represents an opportunity to retain a restaurant use at the site, thereby contributing to the viability of ground-level commercial uses in Carlyle, while eliminating the operational elements of the prior restaurant that proved objectionable to adjacent residents and necessitated a significant enforcement initiative.

Staff believes that its proposed conditions, which have been agreed to by the applicant and reviewed by adjacent neighbors, will eliminate the potential for the noise impacts reported by neighbors over the last three years. The new proposed closing hour (Condition #6) of 9:30pm Sunday-Thursday and 10:30pm on Friday and Saturday is more typical for an eating establishment and much earlier than the 12:00 midnight and 1:30am closing hours approved under the prior SUP. The reduction in indoor and outdoor seating from a total of 186 to 125 seats (Condition #4) translates to a lower noise potential given that fewer people will be in the restaurant at any one time. Most significantly, the elimination of all live entertainment and sound amplification except for soft background music to the satisfaction of the Director of Planning & Zoning (Conditions #30 and 31 respectively) will remove the possibility of the nightclub-like atmosphere as was alleged at Zikrayet.

Staff hereby approves the Special Use Permit request.

ADMINISTRATIVE ACTION - DEPARTMENT OF PLANNING AND ZONING:

Date:

Action:

Barbara Ross, Deputy Director

Attachments: 1) Special Use Permit Conditions
2) City Department Comments
3) Statement of Consent

CONDITIONS OF SPECIAL USE PERMIT #2011-0065

The new owner is responsible for ensuring that the following conditions are adhered to at all times. Violation of any of the conditions may result in fines and/or referral to public hearing by the Planning Commission and City Council.

1. The Special Use Permit shall be granted to the applicant only or to any corporation in which the applicant has a controlling interest. (P&Z) (SUP#2007-0114)
2. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements, and on how to prevent underage sales of alcohol. (P&Z) (SUP#2007-0114)
3. **CONDITION DELETED BY STAFF:** ~~The applicant shall comply with any requirements adopted as a part of a smoke free restaurant ordinance. (P&Z) (SUP#2007-0114)~~
4. **CONDITION AMENDED BY STAFF:** ~~Seating shall be provided for no more than 130 inside and 56 outside. The maximum number of indoor seats at the restaurant shall be 100 and the maximum number of outdoor seats at the restaurant shall be 25. (P&Z) (SUP#2007-0114)~~
5. The applicant shall post the hours of operation at the entrance of the restaurant. (P&Z) (SUP#2007-0114)
6. **CONDITION AMENDED BY STAFF:** The maximum hours of operation for the restaurant shall be between 7am-midnight 11:00am and 9:30pm Sunday through Wednesday Thursday and between 7:00 am — 1:30 am, 11:00am and 10:30pm Thursday through Friday and Saturday. (P&Z) (SUP#2007-0114)
7. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z) (T&ES) (SUP#2007-0114)
8. The applicant shall install signs inside the building indicating the location of off-street parking in the area and shall inform customers about the parking. (P&Z) (SUP#2007-0114)
9. No food, beverages, or other material shall be stored outside. (P&Z) (SUP#2007-0114)
10. The applicant shall provide its employees who drive off-street parking and/or provide employees who use mass transit with subsidized bus and rail fare media.

- The applicant shall also post DASH and Metrobus schedules on-site for employees. (P&Z) (T&ES) (SUP#2007-0114)
11. **CONDITION AMENDED BY STAFF:** All loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (P&Z) (T&ES) (SUP#2007-0114)
 12. **CONDITION AMENDED BY STAFF:** For indoor patrons, meals ordered before the closing hour may be served, but no new patrons may be admitted, and all patrons must leave by one hour after the closing hour. (P&Z) (SUP#2007-0114)
 13. The applicant shall provide a menu list of foods to be handled at this facility to the Health Department prior to opening. (Health) (SUP#2007-0114)
 14. **CONDITION DELETED BY STAFF:** ~~Trash shall be commercially collected a minimum of four times per week to minimize trash impacts. (P&Z) (SUP#2007-0114)~~
 15. **CONDITION AMENDED BY STAFF:** The Director of Planning and Zoning shall review the Special Use Permit after it has been operational for one year, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community; (b) the director has received a request from any person to docket the permit for review as the result of a complaint that rises to the level of a violation of the permit conditions, or (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed. (P&Z) (SUP#2007-0114)
 16. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers. (T&ES) (SUP#2007-0114)
 17. The applicant shall control odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation and Environmental Services. (T&ES) (SUP#2007-0114)
 18. **CONDITION DELETED BY STAFF:** ~~The applicant shall provide storage space for solid waste and recyclable materials containers as outlined in the City's "Solid Waste and Recyclable Materials Storage Space Guidelines", or to the satisfaction of the Director of Transportation & Environmental Services. The City's storage space guidelines and required Recycling Implementation Plan forms are available at: www.alexandriava.gov or contact the City's Solid Waste Division at 703-519-3486 ext.132. (T&ES) (SUP#2007-0114)~~

19. All patrons shall be seated by a host or hostess, printed menus shall be provided at the tables, service shall be provided at the tables by a waiter or waitress, and tables shall be preset with non-disposable tableware and glassware. (P&Z) (SUP#2007-0114)
20. **CONDITION AMENDED BY STAFF:** Supply deliveries to the business shall not take place between the hours of 7:00 a.m. and 9:30 a.m., or between 4:00 p.m. and 6:00 p.m., Monday through Friday. Deliveries to restaurants within residential buildings or whose service drive adjoins a residential building shall not take place before 7:00 a.m. or after 10:00 p.m. (P&Z) (T&ES) ~~(SUP#2007-0114)~~
21. If any food delivery services are provided, they shall clearly be accessory to dine-in food sales, and all deliveries shall be non-vehicular (made on foot, via bicycle, etc.). Alcoholic beverages shall not be delivered off-site, and delivery of nonalcoholic beverages shall only be in association with food deliveries. (P&Z) (SUP#2007-0114)
22. Alcoholic beverages may be sold for on-premises consumption only, and shall clearly be accessory to food sales. (P&Z) (SUP#2007-0114)
23. Grease traps shall be located within the building. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers. (P&Z) (T&ES) (SUP#2007-0114)
24. No food, beverages, or other material shall be stored outside. (P&Z) (SUP#2007-0114)
25. Trash and garbage shall be placed in sealed containers, which do not allow odors to escape and shall be stored inside or in a closed container, which does not allow invasions by animals. No trash or debris shall be allowed to accumulate on-site outside of those containers. (P&Z) (SUP#2007-0114)
26. The design of the restaurant shall reflect the character and quality of materials consistent with the high standards established in Carlyle. (P&Z) (SUP#2007-0114)
27. **CONDITION DELETED BY STAFF:** ~~All outdoor dining areas shall be accessory to an approved indoor restaurant. (P&Z) (SUP#2007-0114)~~
28. **CONDITION AMENDED BY STAFF:** An unobstructed pedestrian pathway with a minimum width of 8 feet, including as measured to the back of the ADA ramp, shall be provided along the sidewalk in front of the restaurant at all times. (P&Z) (T&ES) ~~(SUP#2007-0114)~~
29. **CONDITION DELETED BY STAFF:** ~~Any permanent structures which are~~

- ~~required for the outdoor seating area shall be subject to review and approval by the Carlyle DRB. (P&Z) (SUP#2007-0114)~~
30. **CONDITION AMENDED BY STAFF:** No live entertainment shall be permitted inside the restaurant or in the outdoor seating area. (P&Z) (T&ES) ~~(SUP#2007-0114)~~
31. **CONDITION AMENDED BY STAFF:** No sound amplification shall be permitted in the outdoor seating area. No sound amplification louder than soft background music to the satisfaction of the Director of Planning and Zoning shall be permitted inside the restaurant. (P&Z) ~~(SUP#2007-0114)~~
32. Any outdoor seating areas shall not include advertising signage. The design of the outdoor seating shall be compatible with the design of the building. (P&Z) (SUP#2007-0114)
33. **CONDITION DELETED BY STAFF:** ~~The applicant shall provide, at its expense, one city trash container Model SD 42 exclusively for each outdoor dining area. The trash container shall be emptied at the close of business each day. (P&Z) (SUP#2007-0114)~~
34. The outside dining area shall be cleaned at the close of each day of operation. (P&Z) (T&ES) (SUP#2007-0114)
35. **CONDITION AMENDED BY STAFF:** The applicant shall contact the ~~Crime Prevention~~ Community Relations Unit of the Alexandria Police Department for a security survey and a robbery awareness program for all employees. (P&Z) ~~(SUP#2007-0114)~~
36. **CONDITION ADDED BY STAFF:** Any barrier associated with the outdoor seating (whether sectional fencing or rail-type) must be freestanding, without any permanent or temporary attachments to buildings, sidewalks or other infrastructure. (P&Z) (T&ES)

CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Transportation & Environmental Services:

- R-1 Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z/T&ES) (SUP2007-00114)
- R-2 The applicant shall provide its employees who drive off-street parking and/or provide employees who use mass transit with subsidized bus and rail fare media. The applicant shall also post DASH and Metrobus schedules on-site for employees. (P&Z/T&ES) (SUP2007-00114)
- R-3 **ALL** Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line. (~~P&Z~~ T&ES) (SUP2007-00114)
- R-4 Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers. (T&ES) (SUP2007-00114)
- R-5 The applicant shall control odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation and Environmental Services. (T&ES) (SUP2007-00114)
- R-6 **DELETED BY STAFF (replaced with Code Requirement)** ~~The applicant shall provide storage space for solid waste and recyclable materials containers as outlined in the City's "Solid Waste and Recyclable Materials Storage Space Guidelines", or to the satisfaction of the Director of Transportation & Environmental Services. The City's storage space guidelines and required Recycling Implementation Plan forms are available at: www.alexandriava.gov or contact the City's Solid Waste Division at 703-519-3486 ext.132. (T&ES) (SUP2007-00114)~~
- R-7 **AMENDED BY STAFF: Supply** deliveries to the business shall not take place between the hours of 7:00 a.m. and 9:30 a.m., or between 4:00 p.m. and 6:00 p.m., Monday through Friday. Deliveries to restaurants within residential buildings or whose service drive adjoins a residential building shall not take place before 7:00 a.m. or after 10:00 p.m. (T&ES) (SUP2007-00114)

- R-8 Grease traps shall be located within the building. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. **(T&ES)** (SUP2007-00114)
- R-9 **AMENDED BY STAFF:** An unobstructed pathway with a minimum width of 8 feet shall be provided at all times, including to the back of the ADA ramp. **(T&ES)** (SUP2007-00114)
- R-10 **DELETED BY STAFF:** ~~Any permanent structures which are required for the outdoor seating area shall be subject to review and approval by the Carlyle DRB. (SUP2007-00114) (T&ES)~~
- R-11 No live entertainment shall be permitted in the outdoor seating area. **(T&ES)** (SUP2007-00114)
- R-12 No sound amplification shall be permitted in the outdoor seating area. **(T&ES)** (SUP2007-00114)
- R-13 **DELETED BY STAFF:** ~~The applicant shall provide, at its expense, one city trash container Model SD-42 exclusively for each outdoor dining area. The trash container shall be emptied at the close of business each day. (SUP2007-00114)~~
- R-14 The outside dining area shall be cleaned at the close of each day of operation. **(T&ES)** (SUP2007-00114)
- R-15 **Added by Staff:** No live entertainment shall be provided at the restaurant. **(T&ES)** (P&Z)
- R-16 **Added by Staff:** Any barrier (whether sectional fencing or rail-type) must be freestanding, without any permanent or temporary attachments to buildings, sidewalks or other infrastructure. **(T&ES)**
- C-1 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line. (AUP2007-00003)
- C-2 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99). (AUP2007-00003)

In order to comply with this code requirement, the applicant shall provide a completed Recycling Implementation Plan (RIP) Form within 60 days of City Council approval. Contact the City's Recycling Program Coordinator at (703) 746-4410, or via e-mail at commercialrecycling@alexandriava.gov, for information about completing this form. **(T&ES)**

Code Enforcement:

F-1 No Comment

Health Department:

F-1 This facility is currently vacant.

R-1 Provide a menu or list of foods to be handled at this facility to the Health Department prior to opening.

C-1 An Alexandria Health Department Permit is required for all regulated facilities.

C-2 Permits are non-transferable.

C-3 This facility must meet current Alexandria City Code requirements for food establishments. Contact Environmental Health at 703-746-4866 or 4867 to arrange for a "change of ownership" inspection.

C-4 If changes to the facility are to be done, six sets of plans must be submitted through the Permit Center and approved by this department prior to construction. Plans must comply with the Alexandria City Code, Title 11, Chapter 2, Food and Food Establishments. There is a \$200.00 fee for review of plans for food facilities.

C-5 Permits must be obtained prior to operation.

C-6 The facility must comply with the Alexandria City Code, Title 11, Chapter 10, Smoking Prohibitions.

C-7 Certified Food Managers must be on duty during all hours of operation.

C-8 Restrooms, including those in common areas, serving the restaurant, are to meet Alexandria City Code, Title 11, Chapter 2 requirements.

Parks and Recreation:

F-1 No Comments Received

Police Department:

F-1 The applicant is seeking an "ABC On" license only. The Police Department has no objections.

R-1 The applicant is to contact the Community Relations Unit of the Alexandria Police Department at 703-6838 regarding a security survey for the business.

- R-2 The applicant is to contact the Community Relations Unit of the Alexandria Police Department at 703-746-6838 regarding a robbery readiness program for all employees.

STATEMENT OF CONSENT

The undersigned hereby agrees and consents to the attached conditions of this Special Use Permit #2011-0065. The undersigned also hereby agrees to obtain all applicable licenses and permits required for the restaurant at 540 John Carlyle Street.

Applicant - Signature

Date

Applicant – Printed

Date